IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Anil Kumar Chandna. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 3617/2004

...

M/s. Bikaner Clay & Chemicals. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 3618/2004

...

M/s. Tahla Ram & Sons. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 2304/2003

...

Mohan Lal Ice Factory. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 4115/2004

and

Nand Kishore Satyadev. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 4116/2004

...

Date of Order: February 21, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.S. Purohit and Mr. Mukesh Rajpurohit, for the petitioners.
Mr. Rameshwar Dave, Deputy Govt. Advocate.

BY THE COURT:

All these five writ petitions involve identical questions of law and facts and, therefore, with the consent of the learned counsel for the parties, they are being heard and decided by a common order, taking the facts of SBCWP No. 3617/2004 as the leading case.

The petitioner was issued a notice by the Labour Inspector in the year 1997 with the allegation that the petitioner firm has engaged child labourers. Thereafter the Tehsildar issued a notice asking the petitioner to deposit a huge amount, else to take coercive measures against it. The petitioner has challenged the impugned notices on the ground that the respondents, being the Authorities of the State Government, have no authority to issue such notices under the Child Labour (Prohibition) and Regulation Act, 1986 (for short, "the Act of 1986" hereinafter) and the matter falls exclusive within the domain of the Central Government.

Heard learned counsel for the parties.

Section 14 of the Act of 1986 prescribes penalty for contravention of the provisions of Section 3 of the Act of 1986. A penalty for contravening the provisions of the Act can be

imposed after adhering a procedure prescribed under Section 16 of the Act of 1986, which reads as under:-

> "16. Procedure relating to offences:- (1) Any person, police officer or inspector may file a complaint of the commission of an offence under the Act in any Court of competent jurisdiction.
>
> (2)Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purpose of this Act, be conclusive evidence as to the age of the child to whom it relates.
>
> (3) No Court inferior to that of a Metropolitan Magistrate of a Magistrate of the first class shall try any offence under this Act."

From a perusal of Section 16 of the Act of 1986, it is apparent that any person, police officer or inspector is required to file a complaint of commission of the offence under the Act of 1986 in any Court of competent jurisdiction that is of the Court of Metropolitan Magistrate or Magistrate of the first class as the case may be. After filing a complaint, trial is required to be made for convicting a person for contravention of any of the provisions of the Act of 1986.

In the instant matters, though survey were made by the respondents but admittedly no complaint was filed before the competent Court and, therefore, no penalty upon the petitioners could have been imposed. The imposition of penalty by the departmental authorities themselves is, therefore, wholly without jurisdiction.

Accordingly, these writ petitions are allowed. The penalty being wholly without jurisdiction is hereby quashed. Stay petitions also stand disposed of. There shall be no order as to costs.

(H.R. PANWAR), J.

mcs